

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

(1) Claimant alleges he suffered an inguinal hernia while performing his regular work activities for the respondent on March 6, 1997, his last day worked before surgery. Respondent argues that claimant failed to prove that his hernia had a causal connection to his work and further failed to give timely notice to the respondent of the work-related accident.

Following the preliminary hearing held on June 25, 1997, the Administrative Law Judge denied claimant's request for payment of medical expenses incurred to date as authorized medical and claimant's request for temporary total disability compensation.

The Appeals Board finds claimant's hernia was caused by his pushing, pulling, and lifting activities which he was required to perform while employed in respondent's meat packing department. This conclusion is supported by claimant's testimony that he developed pain in his groin at work and reported it the same day at the respondent's infirmary. He also reported his injury to Debbie Martinez, respondent's workers compensation coordinator that same day. Ms. Martinez testified that the claimant related having groin pain for the past three weeks but did not relate the pain to any specific lifting activities at work. Claimant alleges his groin pain began on March 6, 1997, while lifting a heavy box.

On March 6, 1997, claimant was seen by his personal physician, Jan Goossens, M.D. According to his office record, claimant related having had groin pain for three weeks, which would come and go but was much more severe at that time. Claimant could not recall any specific injury. Dr. Goossens diagnosed claimant with a left inguinal hernia and a possible right inguinal hernia, and related both to claimant's employment. Dr. Goossens referred claimant to Edmundo Estrada, M.D., a surgeon. On April 1, 1997, claimant's inguinal hernia was surgically repaired by Dr. Estrada. Claimant was released to return to work on May 19, 1997.

The respondent presented no contradictory testimony on the issue of causation of claimant's hernia. Respondent only argued that the medical records and testimony did not support claimant's amended date of accident. The Appeals Board agrees that there are certain inconsistencies in the record concerning the date of onset of his symptoms. However, at this juncture of the proceedings, the Appeals Board concludes that the preliminary hearing record supports the conclusion that claimant's lifting activities at work, over time, caused claimant's hernia.

(2) Claimant was employed by respondent in the packing department during February and March 1997. Claimant testified that the last day in March that he worked for respondent was March 6, 1997. According to claimant, he notified Ms. Martinez that his lower abdominal or groin pain was work related during a conversation that he had with Ms. Martinez on March 6, 1997. Ms. Martinez also testified at the preliminary hearing. She indicated that she spoke with the claimant on March 6, 1997, and during that conversation

claimant related having groin pain but he did not relate it to any specific accident or work activities. Instead, claimant described having pain over the last three weeks.

Respondent argues that claimant's claim for compensation benefits is barred because claimant failed to give the respondent notice of the accident within 10 days after the accident as required by K.S.A. 44-520. If claimant did notify Ms. Martinez that his groin pain was work related on March 6, 1997, then claimant would have given respondent notice within 10 days only if his date of accident was March 6, 1997. However, if claimant was injured three weeks before March 6, 1997, then notice would not have been given within 10 days following claimant's accident. The Appeals Board finds from claimant's testimony and the March 6, 1997, office notes of Dr. Goossens that claimant's groin pain became much more severe on March 6, 1997. As such, an aggravation on March 6, 1997, is established and that date should be considered the claimant's accident date.

The Appeals Board further finds that even if notice of accident was not given to respondent on the date of onset of claimant's groin pain, that claimant has met the "just cause" exception for not giving notice within 10 days. See K.S.A. 44-520. Claimant did not know he had a hernia until the doctor diagnosed the hernia on March 6, 1997. Also, before March 6, 1997, claimant did not know he had a work-related injury. Absent some knowledge that his groin pain was work related, claimant was unable to give notice of accident. Therefore, just cause existed for claimant's failure to give notice before March 6, 1997.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Kenneth S. Johnson dated August 15, 1997, is reversed and this matter is remanded to the Administrative Law Judge for further orders consistent with this opinion concerning claimant's request for medical and temporary total disability benefits.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1997.

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BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS  
Shirla R. McQueen, Liberal, KS  
Kenneth S. Johnson, Administrative Law Judge  
Philip S. Harness, Director